

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

FRED ROY CAUGHLIN,

No. CV 10-580-SU

OPINION & ORDER

Petitioner,

v.

**JEFF PREMO,
Superintendent, OSP,**

Respondent.

MOSMAN, J.,

On October 8, 2009, Magistrate Judge Sullivan issued Findings and Recommendation ("F&R") (#6) in the above-captioned case recommending that Petitioner's Motion for Stay (#5) be construed as a motion for voluntary dismissal without prejudice and granted. Judge Sullivan further recommended that the Petition for Writ of Habeas Corpus be denied without prejudice. No objections were filed.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a *de novo* determination of those portions of the report or specified findings or

recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Sullivan's recommendation, and I ADOPT the F&R (#6) as my own opinion. Petitioner's Motion for Stay (#5) is construed as a motion for voluntary dismissal without prejudice and GRANTED. The Petition for Writ of Habeas Corpus (#2) is DISMISSED without prejudice. Should petitioner appeal, a certificate of appealability should be denied as petitioner has not made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

DATED this 23rd day of July, 2010.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court